

Request for Reconsideration after Final Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	86272695
LAW OFFICE ASSIGNED	LAW OFFICE 117
MARK SECTION	
MARK	http://tmng-al.uspto.gov/resting2/api/img/86272695/large
LITERAL ELEMENT	GUNTACO
STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
MARK STATEMENT	The mark consists of standard characters, without claim to any particular font style, size or color.
ARGUMENT(S)	
<p>The Examiner has refused registration of Applicant's marks GUNTACO on grounds of likely confusion under Section 2(d) of the Trademark Act with one prior registration for the mark TACO - U.S. Registration No. 430153. For the reasons noted below, this refusal should be withdrawn since Applicant's mark is not likely to be confused with the cited mark for the relevant goods.</p> <p>Applicant is amenable to amending the id to read as follows: "Equipment to protect a shotgun or rifle in the nature of padding, a protective material, a sleeve, or a grip."</p> <p>A. The Marks Are Dissimilar</p> <p>The Examiner has cited the mark above against Applicant's GUNTACO mark. Marks are to be considered in their entirety when being analyzed for likely confusion, and all relevant facts pertaining to sound, appearance and connotation must be considered. <i>Recot, Inc. v. M.C. Becton</i>, 214 F.3d 1322, 54 U.S.P.Q. 2d 1894 (Fed. Cir. 2000). Moreover, words that are considered descriptive are not to be disregarded in a likely confusion analysis. Thus, when considered in their entireties, Applicant's mark is sufficiently different in appearance, sound, and commercial impression from the cited mark to avoid any likelihood of confusion, thus, based on an analysis of the marks themselves, there is no likelihood the public would confuse these marks when view in their entireties and assume they refer to the same source. Accordingly, this refusal of registration should be withdrawn.</p>	

The sole question here is whether "GUNTACO" so resembles "TACO," as to be likely, when applied to applicant's goods, to cause confusion or mistake or to deceive purchasers.

The first word of the two marks are dissimilar, with Applicant beginning with "GUN" and Registrant "TACO." Murray Corp. of America v. Red Spot Paint & Varnish Co., 47 C.C.P.A. 1152, 1155-1156 (C.C.P.A. 1960) (EASYTINT and EASY for touch-up enamel and white paint, respectively, not likely to be confused). This alone justifies withdrawal of refusal of registration.

Moreover, when considering those marks in their entireties, it is clear that likelihood of confusion does not exist. Murray Corp. of America v. Red Spot Paint & Varnish Co., 47 C.C.P.A. 1152, 1155-1156 (C.C.P.A. 1960) (EASYTINT and EASY for touch-up enamel and white paint, respectively, not likely to be confused). GUNTACO and TACO are not likely to be confused.

B. The Goods, Markets, Channels of Trade, and Target Customer Are Dissimilar

Applicant's marks seek registration for (with amendment):

IC 13: Equipment to protect a shotgun or rifle in the nature of padding, a protective material, a sleeve, or a grip.

Registrant has its cited mark registered for:

IC 13: Tactical gear and tactical equipment for military, law enforcement, public safety, airsoft, paintball, hunting and outdoor recreation applications, namely, pouches and carriers for cartridges and ammunition magazines, fastening clips for securing tactical gear accessories and ammunition magazine pouches, and component parts for ammunition magazine pouches.

Registrant's web site at <http://www.highspeedgear.com/> clearly shows that its business revolves around tactical gear and tactical equipment goods for military, law enforcement type individuals. Registrant does not sell "equipment to protect a shotgun or rifle," which is the crux and focus of Applicant's business. The two companies provide different types of goods, geared at different consumers, with highly different functions and purposes.

The Examiner contends in his Office Action that Registrant's and Applicant's goods are "closely related". The Examiner cites a third party registration which allegedly contain the goods of both parties, claiming this demonstrates that the public is likely to assume some Applicant's and Registrant's goods emanate from the same source. When placed into context, it is evident that these goods are not related.

Applicant's target customers are "sporting clay, skeet and track shooters." Registrant's customers are "military, law enforcement, etc." Purchasers of Registrant and Applicant's products are both very highly skilled and sophisticated in their own diverse fields, and there is no likelihood that either would ever confuse Applicant and Registrant or the goods each provides, especially because the marks are different. The cost element of these two companies' offerings is also very relevant since Registrant's expensive goods would not be purchased without a great deal of scrutiny as to their nature, purpose and function.

Thus, the Examiner's basis for finding the goods likely to be confused because both are likely

to be encountered by the same purchasers under circumstances that would create a likelihood of confusion is not based in the realities of actual marketplace conditions. Moreover, a very careful reading and consideration of the goods (as amended by the Applicant) of each demonstrates that the offerings of each entity are different and unrelated, and nothing in their marketing would result in customers or purchasers confusing the two. Accordingly, there is no likelihood that their goods will be confused based on these distinctions as well as those discussed above. Thus, the refusal of registration should be withdrawn.

GOODS AND/OR SERVICES SECTION (current)**INTERNATIONAL CLASS**

013

DESCRIPTION

Firearm accessories, namely, equipment to protect a shotgun or rifle

FILING BASIS

Section 1(b)

GOODS AND/OR SERVICES SECTION (proposed)**INTERNATIONAL CLASS**

013

TRACKED TEXT DESCRIPTION

~~Firearm accessories, namely, equipment to protect a shotgun or rifle;~~ [Equipment to protect a shotgun or rifle in the nature of padding, a protective material, a sleeve, or a grip](#)

FINAL DESCRIPTION

Equipment to protect a shotgun or rifle in the nature of padding, a protective material, a sleeve, or a grip

FILING BASIS

Section 1(b)

SIGNATURE SECTION**RESPONSE SIGNATURE**

/Andrew D. Skale/

SIGNATORY'S NAME

Andrew D. Skale

SIGNATORY'S POSITION

Attorney of record

SIGNATORY'S PHONE NUMBER

858-314-1506

DATE SIGNED

09/15/2015

AUTHORIZED SIGNATORY

YES

CONCURRENT APPEAL NOTICE FILED

YES

FILING INFORMATION SECTION**SUBMIT DATE**

Tue Sep 15 15:04:58 EDT 2015

TEAS STAMP

USPTO/RFR-38.97.105.2-201
50915150458571156-8627269
5-54091f7f9b77474a7887389
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46356d9f4b1651dcf-N/A-N/A

Request for Reconsideration after Final Action To the Commissioner for Trademarks:

Application serial no. **86272695** GUNTACO(Standard Characters, see <http://tmng-al.uspto.gov/resting2/api/img/86272695/large>) has been amended as follows:

ARGUMENT(S)

In response to the substantive refusal(s), please note the following:

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CLASSIFICATION AND LISTING OF GOODS/SERVICES

Applicant proposes to amend the following class of goods/services in the application:

Current: Class 013 for Firearm accessories, namely, equipment to protect a shotgun or rifle

Original Filing Basis:

Filing Basis: Section 1(b), Intent to Use: *For a trademark or service mark application:* As of the application filing date, the applicant had a bona fide intention, and was entitled, to use the mark in commerce on or in connection with the identified goods/services in the application. *For a collective trademark, collective service mark, or collective membership mark application:* As of the application filing date, the applicant had a bona fide intention, and was entitled, to exercise legitimate control over the use of the mark in commerce by members on or in connection with the identified goods/services/collective membership organization. *For a certification mark application:* As of the application filing date, the applicant had a bona fide intention, and was entitled, to exercise legitimate control over the use of the mark in commerce by authorized users in connection with the identified goods/services, and the applicant will not engage in the production or marketing of the goods/services to which the mark is applied, except to advertise or promote recognition of the certification program or of the goods/services that meet the certification standards of the applicant.

Proposed:

Tracked Text Description: ~~Firearm accessories, namely, equipment to protect a shotgun or rifle;~~
Equipment to protect a shotgun or rifle in the nature of padding, a protective material, a sleeve, or a grip

Class 013 for Equipment to protect a shotgun or rifle in the nature of padding, a protective material, a sleeve, or a grip

Filing Basis: Section 1(b), Intent to Use: *For a trademark or service mark application:* As of the application filing date, the applicant had a bona fide intention, and was entitled, to use the mark in commerce on or in connection with the identified goods/services in the application. *For a collective trademark, collective service mark, or collective membership mark application:* As of the application filing date, the applicant had a bona fide intention, and was entitled, to exercise legitimate control over the use of the mark in commerce by members on or in connection with the identified goods/services/collective membership organization. *For a certification mark application:* As of the application filing date, the applicant had a bona fide intention, and was entitled, to exercise legitimate control over the use of the mark in commerce by authorized users in connection with the identified goods/services, and the applicant will not engage in the production or marketing of the goods/services to which the mark is applied, except to advertise or promote recognition of the certification program or of the goods/services that meet the certification standards of the applicant.

SIGNATURE(S)

Request for Reconsideration Signature

Signature: /Andrew D. Skale/ Date: 09/15/2015

Signatory's Name: Andrew D. Skale

Signatory's Position: Attorney of record

Signatory's Phone Number: 858-314-1506

The signatory has confirmed that he/she is an attorney who is a member in good standing of the bar of the highest court of a U.S. state, which includes the District of Columbia, Puerto Rico, and other federal territories and possessions; and he/she is currently the owner's/holder's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S. attorney or a Canadian attorney/agent not currently associated with his/her company/firm previously represented the owner/holder in this matter: (1) the owner/holder has filed or is concurrently filing a signed revocation of or substitute power of attorney with the USPTO; (2) the USPTO has granted the request of the prior representative to withdraw; (3) the owner/holder has filed a power of attorney appointing him/her in this matter; or (4) the

owner's/holder's appointed U.S. attorney or Canadian attorney/agent has filed a power of attorney appointing him/her as an associate attorney in this matter.

The applicant is filing a Notice of Appeal in conjunction with this Request for Reconsideration.

Serial Number: 86272695

Internet Transmission Date: Tue Sep 15 15:04:58 EDT 2015

TEAS Stamp: USPTO/RFR-38.97.105.2-201509151504585711

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